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HEWLETT-PACKARD COMPANY
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PATENT APPLICATION

ATTORNEY DOCKET NO. **10016591-1**

IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor(s): Richard P. Tarquini et al.   Confirmation No.: 2400

Application No.: 10/001,446   Examiner: L. L. Lashley

Filing Date: October 31, 2001   Group Art Unit: 2132

Title: **NETWORK AND METHOD AND COMPUTER READABLE MEDIUM FOR DISTRIBUTING SECURITY UPDATES TO SELECT NODES ON A NETWORK**

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Commissioner For Patents
PO Box 1450
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TRANSMITTAL OF APPEAL BRIEF

Transmitted herewith is the Appeal Brief in this application with respect to the Notice of Appeal filed on _____May 22, 2006_____ .

The fee for filing this Appeal Brief is (37 CFR 1.17(c)) $500.00.

(complete (a) or (b) as applicable)

The proceedings herein are for a patent application and the provisions of 37 CFR 1.136(a) apply.

☐(a) Applicant petitions for an extension of time under 37 CFR 1.136 (fees: 37 CFR 1.17(a)-(d)) for the total number of months checked below:

| ☐ | 1st Month $120 | ☐ | 2nd Month $450 | ☐ | 3rd Month $1020 | ☐ | 4th Month $1590 |

☐ The extension fee has already been filed in this application.

☒(b) Applicant believes that no extension of time is required. However, this conditional petition is being made to provide for the possibility that applicant has inadvertently overlooked the need for a petition and fee for extension of time.

Please charge to Deposit Account 08-2025 the sum of ___$ 500___ . At any time during the pendency of this application, please charge any fees required or credit any over payment to Deposit Account 08-2025 pursuant to 37 CFR 1.25. Additionally please charge any fees to Deposit Account 08-2025 under 37 CFR 1.16 through 1.21 inclusive, and any other sections in Title 37 of the Code of Federal Regulations that may regulate fees. A duplicate copy of this sheet is enclosed.

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Respectfully submitted,

Richard P. Tarquini et al.

By_____

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Rev 10/05 (AplBrief)

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Docket No.: 10016591-1
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Richard P. Tarquini et al.

Application No.: 10/001,446

Confirmation No.: 2400

Filed: October 31, 2001

Art Unit: 2132

For: NETWORK, METHOD AND COMPUTER
     READABLE MEDIUM FOR DISTRIBUTING
     SECURITY UPDATES TO SELECT NODES
     ON A NETWORK

Examiner: L. L. Lashley

APPEAL BRIEF

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

As required under § 41.37(a), this brief is filed within two months of the Notice of Appeal filed in this case on May 22, 2006, and is in furtherance of said Notice of Appeal. The fees required under § 41.20(b)(2) are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF. This brief contains items under the following headings as required by 37 C.F.R. § 41.37 and M.P.E.P. § 1205:

I.	Real Party In Interest
II	Related Appeals and Interferences
III.	Status of Claims
IV.	Status of Amendments
V.	Summary of Claimed Subject Matter
VI.	Grounds of Rejection to be Reviewed on Appeal
VII.	Argument
VIII.	Claims Appendix
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I.   REAL PARTY IN INTEREST

The real party in interest for this appeal is:

Hewlett-Packard Development Company, L.P., a Limited Partnership established under the laws of the State of Texas and having a principal place of business at 20555 S.H. 249, Houston, TX 77070, U.S.A. (hereinafter "HPDC"). HPDC is a Texas limited partnership and is a wholly-owned affiliate of Hewlett-Packard Company, a Delaware Corporation, headquartered in Palo Alto, CA. The general or managing partner of HPDC is HPQ Holdings, LLC.

II.   RELATED APPEALS AND INTERFERENCES

There are no other appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III.   STATUS OF CLAIMS

A.   Total Number of Claims in Application

There are 17 claims pending in application.

B.   Current Status of Claims

    1.   Claims canceled: None

    2.   Claims withdrawn from consideration but not canceled: 11-17

    3.   Claims pending: 1-10

    4.   Claims allowed: None

    5.   Claims rejected: 1-10

C.   Claims On Appeal

The claims on appeal are claims 1-10.

IV.   STATUS OF AMENDMENTS

A Final Office Action rejecting the claims of the present application was mailed March 24, 2006. In response, Applicant did not file an Amendment After Final Rejection, but instead filed a Notice of Appeal, which this brief supports. Accordingly, the claims on appeal are those as rejected in the Final Office Action of March 24, 2006. A listing of the claims is provided in the Claims Appendix section of this brief.

V.   SUMMARY OF CLAIMED SUBJECT MATTER

The following provides a concise explanation of the subject matter defined in the independent claim involved in the appeal, referring to the specification by page and line number and to the drawings by reference characters, as required by 37 C.F.R. § 41.37. Each element of the claim is identified by a corresponding reference to the specification and drawings where applicable. However, the citation to passages in the specification and drawings does not imply that the limitations from the specification and drawings should be read into the corresponding claim element.

According to one claimed embodiment, such as that of independent claim 1, a network having an intrusion protection system (page 11, lines 3-26; figure 2) comprises a network medium (page 11, lines 6 and 7; figure 2, items 55, 56, and 100), a management node connected to the network medium and running an intrusion prevention system management application (page 15, lines 10-22; figure 1, item 85; figure 5), and a plurality of nodes connected to the network medium and running an instance of an intrusion protection system application (page 14, line 22—page 15, line 9; figure 1, items 270A-F; figure 4), at least one of the nodes having an identification assigned thereto based on a logical assignment grouping one or more of the plurality of nodes (page 18, lines 19-23; figure 7), each node sharing an identification being commonly vulnerable to at least one network exploit (page 18, lines 23-30; figure 7).

According to another embodiment, such as that of dependent claim 8, a network further comprises a network-based intrusion protection system appliance dedicated to filtering inbound and outbound data frames transmitted across the network medium (page 16, line 35—page line 30; figure 6, item 180).

According to another embodiment, such as that of dependent claim 9, a network-based intrusion protection system appliance interfaces with the network medium via a network interface card operating in promiscuous mode (page 16, line 35—page line 30; figure 6, item 180).

According to yet another embodiment, such as that of dependent claim 10, a network-based intrusion protection system appliance shares an identification (page 20, lines 3-5).

VI.   GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1-10 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Holloway, et at. (U.S. Patent No. 5,905,859, hereinafter *Holloway*).

VII.   ARGUMENT

Appellant respectfully traverses the outstanding rejections of the pending claims, and requests that the Board reverse these rejections in light of the remarks contained herein. The claims do not stand or fall together. Instead, Appellant presents separate arguments for several claims. Each of the separately argued claims are presented with separate headings and sub-heading in accordance with 37 C.F.R. § 41.37(c)(1)(vii).

A.   Rejection of Claims 1-10 Under 35 U.S.C. § 102 Over *Holloway*

Claims 1-10 stand rejected under 35 U.S.C. § 102 as being anticipated by *Holloway*. In order to anticipate a claim under 35 U.S.C. § 102, a single reference must teach each and every element of the claim. *See Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). As discussed below, Appellant respectfully submits that *Holloway* fails to teach each and every element of the claims, and respectfully requests that the Board overturn these rejections.

1.   Independent Claim 1 and Dependent Claims 2-7

Claim 1 recites, in part, "a management node connected to the network medium and running an intrusion prevention system management application . . . ." The Examiner relies upon *Holloway*'s network management station as meeting the claimed management node and

contends that "it is inherent that a detection means application is running." Final Office Action, page 3. Appellant respectfully disagrees and notes that:

> "[i]n relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art."

Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). In the present case, the Examiner has not demonstrated how "a management node . . . running an intrusion prevention system management application" necessarily flows from *Holloway*'s teachings, and thus a proper showing of inherency has not been made. Thus, a proper rejection based on inherency has not been established, and should therefore be overturned.

In addition, Appellant has been unable to find any passage of *Holloway* which teaches that *Holloway*'s network management station may run an intrusion prevention system management application. *See e.g.*, *Holloway*, column 4, lines 50-55; figure 1, item 26; column 5, lines 10-16; figure 3. *Holloway*'s network management station may "monitor the progress of [a] security breach detected frame." *See Holloway*, column 6, lines 1-3. However, merely monitoring the progress of a detected frame does not require or imply the running of an intrusion prevention system management application. For instance, *Holloway*'s monitoring of frames by the network management station may serve to monitor that station, rather than to prevent an intrusion. Accordingly, Appellant respectfully asserts that *Holloway* does not teach or suggest a management node running an intrusion prevention system management application, as recited in claim 1.

Claim 1 also recites, in part, "a plurality of nodes connected to the network medium and running an instance of an intrusion protection system application, at least one of the nodes having an identification assigned thereto based on a logical assignment grouping one or more of the plurality of nodes, each node sharing an identification being commonly vulnerable to at least one network exploit." The Examiner relies upon *Holloway*'s managed hub as meeting the claimed nodes. Final Office Action, page 3. According to *Holloway*,

> the managed hub determines the interconnect devices in the campus network that are capable of supporting the LAN security feature. The managed hub periodically sends a discovery frame to the LAN security feature group

address. The managed hub then uses the responses to build and maintain a
table of interconnect devices in the network that support the security feature.

Holloway, column 3, lines 26-32. *Holloway*'s managed hubs themselves are <u>not</u> grouped
together. Rather, *Holloway* merely discloses that its managed hubs may assemble a list of
interconnect devices that support a particular security feature. *Id.* Insofar as the Examiner
may also be relying upon *Holloway*'s interconnect devices as meeting the claimed nodes,
Appellant notes that *Holloway* does not teach that such interconnect devices "[run] an
instance of an intrusion protection system application," as recited in claim 1. Moreover,
while *Holloway*'s interconnect devices may be grouped according to their ability to support a
security feature, they are not grouped according to a common vulnerability to a network
exploit, as also recited in claim 1. Thus, Holloway fails to teach all elements of the claim
arranged as required by the claim.

In response to Appellant's previous remarks, the Examiner has stated that

> [t]he Examiner believes a hub to be a device that connects several other
> devices or nodes (e.g.[,] computers) to a network. Therefore it would be
> inherent in [*Holloway*] that each hub links a grouping of nodes within the
> campus LAN environment."

Final Office Action, page 2. First, Appellant respectfully points out that the Examiner has
previously relied upon *Holloway*'s managed hubs as meeting the claimed nodes. Final Office
Action, page 3. It is inconsistent for the Examiner to also rely on "several other devices" as
meeting the same claimed feature. In any event, the "several other devices" connected to
Holloway's managed hub do not run an instance of an intrusion protection system
application, as recited in claim 1.

Accordingly, for the reasons discussed above, *Holloway* fails to teach all elements of
claim 1. Therefore, Appellant respectfully requests that the Board overturn the rejection of
record with respect to claim 1.

Dependent claims 2-7 depend either directly or indirectly from claim 1, thus
inheriting all of the limitations of that independent claim. As noted above, *Holloway* does
not teach every element of independent claim 1. Consequently, *Holloway* also fails to teach

every element of dependent claims 2-7. Therefore, Appellant respectfully requests that the Board overturn the rejection of record with respect to claims 2-7.

2.   Dependent Claim 8

Dependent claim 8 depends from claim 1, thus inheriting all of the limitations of that independent claim. As noted above, *Holloway* does not teach every element of independent claim 1. Consequently, *Holloway* also fails to teach every element of dependent claim 8. Moreover, claim 8 recites additional limitations not taught by *Holloway*.

For example, claim 8 recites "a network-based intrusion protection system appliance dedicated to filtering inbound and outbound data frames transmitted across the network medium." The Examiner relies upon *Holloway*'s network management station as meeting the claimed network-based intrusion protection system appliance. Final Office Action, page 5. However, there is no indication that *Holloway*'s network management station is an intrusion protection appliance. Furthermore, the section of *Holloway* cited by the Examiner merely discloses transmitting and receiving a discovery request frame in order to build an interconnect device list. *Holloway*, column 18, lines 10-13. Appellant respectfully points out that such steps are performed by a managed hub, and not by the network management station. *See e.g., Holloway*, column 3, lines 32.

Accordingly, for the reasons discussed above, *Holloway* fails to teach all elements of claim 8. Therefore, Appellant respectfully requests that the Board overturn the rejection of record with respect to claim 8.

3.   Dependent Claim 9

Dependent claim 9 depends indirectly from claim 1, thus inheriting all of the limitations of that independent claim. As noted above, *Holloway* does not teach every element of independent claim 1. Consequently, *Holloway* also fails to teach every element of dependent claim 9. Moreover, claim 9 recites additional limitations not taught by *Holloway*.

For example, claim 9 recites that "the network-based intrusion protection system appliance interfaces with the network medium via a network interface card operating in promiscuous mode." As previously noted, *Holloway* does not teach, or even suggest, an

intrusion protection system appliance, much less an intrusion protection system appliance that interfaces with the network medium via a network interface card operating in promiscuous mode, as recited in claim 9.

Accordingly, for the reasons discussed above, *Holloway* fails to teach all elements of claim 9. Therefore, Appellant respectfully requests that the Board overturn the rejection of record with respect to claim 9.

4.   Dependent Claim 10

Dependent claim 10 depends indirectly from claim 1, thus inheriting all of the limitations of that independent claim. As noted above, *Holloway* does not teach every element of independent claim 1. Consequently, *Holloway* also fails to teach every element of dependent claim 10. Moreover, claim 10 recites additional limitations not taught by *Holloway*.

For example, claim 10 recites that "the network-based intrusion protection system appliance shares [an] identification." Applicant points out that claim 1, from which claim 10 depends, provides that the identification is assigned based on a logical assignment grouping one or more of the plurality of nodes, each node sharing an identification being commonly vulnerable to at least one network exploit. As previously noted, *Holloway* does not teach, or even suggest, an intrusion protection system appliance, much less an intrusion protection system appliance that shares an identification assigned based on a logical assignment grouping one or more of the plurality of nodes, each node sharing an identification being commonly vulnerable to at least one network exploit, as recited in claim 10.

Accordingly, for the reasons discussed above, *Holloway* fails to teach all elements of claim 10. Therefore, Appellant respectfully requests that the Board overturn the rejection of record with respect to claim 10.
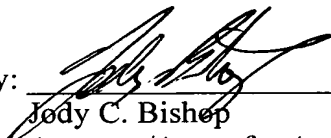
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Date of Deposit: July 11, 2006

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VIII. CLAIMS APPENDIX

Claims Involved in the Appeal of Application Serial No. 10/001,446:

1.   A network having an intrusion protection system, comprising:

a network medium;

a management node connected to the network medium and running an intrusion prevention system management application; and

a plurality of nodes connected to the network medium and running an instance of an intrusion protection system application, at least one of the nodes having an identification assigned thereto based on a logical assignment grouping one or more of the plurality of nodes, each node sharing an identification being commonly vulnerable to at least one network exploit.

2.   The network according to claim 1 wherein the management node is operable to originate a security update that is transmitted to each node sharing the identification, any remaining nodes not sharing the identification being excluded from receiving the update.

3.   The network according to claim 1 wherein a plurality of identifications are respectively assigned to one or more of the plurality of nodes.

4.   The network according to claim 1 wherein the identification is an Internet Protocol multicast group identification.

5.   The network according to claim 2 further comprising:

a plurality of network mediums; and

at least one router, the management node and the plurality of nodes each respectively connected to one of the plurality of network mediums in the network, the router disposed intermediate the plurality of network mediums and operable to forward the security update from the network medium having the management node connected thereto to any nodes connected to the remaining network mediums and sharing the identification.

6.   The network according to claim 5 wherein the router determines whether any of the plurality of nodes connected to the remaining network mediums share the identification through implementation of the Internet group management protocolumn

7.   The network according to claim 1 wherein the network medium is an Ethernet.

8.   The network according to claim 1 further comprising a network-based intrusion protection system appliance dedicated to filtering inbound and outbound data frames transmitted across the network medium.

9.   The network according to claim 8 wherein the network-based intrusion protection system appliance interfaces with the network medium via a network interface card operating in promiscuous mode.

10.   The network according to claim 8 wherein the network-based intrusion protection system appliance shares the identification.

IX.   EVIDENCE APPENDIX

NONE.

X.   RELATED PROCEEDINGS APPENDIX

NONE.